IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

MONDAY, THE 9TH APRIL 2007 / 19TH CHAITHRA 1929

CRL.A.No. 1376 of 2006()

CC.24/2002 of ENQUIRY COMMISSIONER . & SPECIAL JUDGE, THIRUVANANTHAPURAM

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APPELLANT/ACCUSED:

N.K.BALAN, C.NO.445,
CENTRAL PRISON, TRIVANDRUM.

BY ADV. SMT.SANGEETHA LAKSHMANA

RESPONDENT/COMPLAINANT:

STATE OF KERALA REPRESENTED BY A
PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. P. RAVINDRA BABU

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 09/04/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. APPEAL NO.1376 OF 2006

Dated this the 9th day of April, 2007

JUDGMENT

This appeal is filed against the judgment in C.C. No. 24 of 2002 on the file of the Enquiry Commissioner and Special Judge, Thiruvananthapuram. The appellant, the sole accused in the above case, faced trial for the offences punishable under Sections 7 and 13(1)(a) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as "the P.C. Act").

2. The prosecution case against the appellant was that while he was working as Village Assistant of Chethackal Village, Ranni Taluk, he demanded an amount of Rs.2000/- from PW.1 as bribe for giving valuation certificate of the property belonging to the father of PW.1 and accepted a sum of Rs.500/- at 11 a.m. on 7.2.2000. It is the further case of the prosecution that the appellant used to receive bribe from the public habitually for performing his official functions as Village Assistant and thereby committed the offences alleged against him. To prove the case

against the appellant, the prosecution examined PWs.1 to 16 and produced Exts. P1 to P25 as well as MOs. 1 to 12. No oral or documentary evidence was adduced on the side of the defence. After closing the prosecution evidence, the appellant was questioned under Section 313 Cr.P.C. Denying the prosecution allegations, the appellant stated that the case was foisted against him by PW.1 and others who wanted to obtain valuation certificates for more than the actual value of the property. He further stated that the amount recovered from him was the amount he had collected for the village account and not the amount received from PW.1 as alleged by the prosecution. However, relying on the evidence adduced by the prosecution, the trial court found the appellant guilty under Section 7 of the P.C. Act, convicted him thereunder and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.3000/- and in default of payment of fine, to undergo rigorous imprisonment for a further period of three months. The appellant was found not guilty of the offence punishable under Section 13(1)(a) and (d) read with Section 13(2) of the P.C. Act and he was acquitted of those charges. The above conviction and sentence are challenged in this appeal.

3. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. Learned counsel appearing for the appellant submits that the finding of the trial court that the appellant demanded bribe and received a sum of Rs.500/- from PW.1 is not supported by any legally acceptable evidence as there is no independent evidence to corroborate the evidence of PW.1. Counsel further submits that the alleged recovery of an amount of Rs.300/- from the appellant by PW.12 in the presence of PW.2 ought not to have been accepted by the trial court as there was no other evidence to prove that the appellant was in possession of the tainted currency notes. That apart, counsel submits that though the prosecution case was that PW.1 had given Rs.500/- to the appellant, only Rs.300/- was recovered from the appellant. It is the further contention of the learned counsel that PW.1 and PW.13 being interested witnesses, their evidence should not have been accepted by the trial court. Lastly, counsel submits that the sentence awarded is excessive and that even if the entire evidence is accepted, considering the facts and circumstances of the case, the trial court ought to have taken a lenient view.

5. The prosecution mainly relied on the evidence of PWs.1, 12 and 13. According to PW.1, while the appellant was working as Village Assistant of Chethackal Village, his father submitted Ext.P1 application

before the Village Officer for obtaining the valuation certificate of his property for the purpose of offering the same as security for availing of a loan. The said application was entrusted with the appellant for preparing mahazar and sketch on local inspection of the property. PW.1 stated that he approached the appellant for speedy disposal of the matter whereupon the appellant demanded an amount of Rs.2000/- from PW.1 on 5.2.2000 which was later reduced to Rs.1000/-. PW.1 further stated that in pursuance to the above demand, he paid Rs.500/- to the appellant on 7.2.2000. This witness further stated that when he approached the appellant for the required certificate, the appellant made a demand for the balance amount of Rs.500/-. He further stated that since he was not willing to pay the amount, he went to the office of PW.12, the Deputy Superintendent of Police, VACB, Pathanamthitta and gave Ext.P2 first information statement. This witness further stated that he gave five currency notes of hundred rupee denomination (MO.1 series) to PW.12 who after noting down the number of the currency notes in the presence of other officers smeared phenolphthalein powder on the said currency notes and returned the currency notes to him with a direction to hand over the same to the appellant on demand and to give a signal as soon as the appellant accepts the money. Thus witness further stated that though he went to the Village Office to see the appellant on two occasions, the

appellant was not there and that it was only on 19.2.2000 that he met the appellant and handed over the currency notes which were smeared with phenolphthalein powder. PW.1 also stated that the appellant accepted the money and then got into a jeep and left the office and that PW.12 found him at about 4 p.m. on that day .

6. The evidence of PW.1 is corroborated by the evidence of PWs.2, 12 and 13. PW.2 had accompanied PW.1 to the Village Office on the instruction of PW.12. PW.13 is the friend of PW.1 who had also accompanied PW.1 to the Village Office on 19.2.2000. This witness stated that he too had applied for valuation certificate. The prosecution also examined PWs.7, 8, 9 and 10 to prove that the appellant demanded bribe for issuing valuation certificate. PW.12 stated that PW.1 had given Ext.P2 first information statement on the basis of which he laid the trap . This witness also stated that when he found the appellant in the evening, the appellant was drunk and three currency notes of hundred rupee denomination were found in the possession of the appellant which when subjected to phenolphthalein test gave positive result. To prove the fact that the appellant had consumed toddy, the prosecution relied on the evidence of PW.4 who had stated that the appellant consumed toddy in the morning and evening and paid Rs.200/-. The currency notes given by the

appellant to PW.4 could not be recovered as the same might have been given to other customers in the course of business. However, it has come out from the evidence of PWs.2 and 12 that an amount of Rs.300/- was recovered from the pocket of the appellant which when subjected to phenolphthalein test gave positive result. Even though the appellant had stated that the currency notes recovered from his pocket were not the ones alleged to have been given by PW.1, it was proved beyond reasonable doubt that the currency notes recovered from the possession of the appellant were the same currency notes which were handed over to PW.12 by PW.1 in the presence of PW.2 and CW.3. The result of the phenolphthalein test also would prove that the currency notes recovered from the appellant were the same currency notes which PW.1 had handed over to the appellant on the instruction of PW.12.

7. Even though the main contention of the learned counsel appearing for the appellant was that there was no independent evidence to support the version given by PW.1 with regard to the alleged demand made by the appellant, as per Section 20(1) of the P.C. Act, presumption is available to the prosecution to prove that the appellant demanded and received bribe unless the contrary is proved. Section 20 reads as follows:

> "20. **Presumption where public servant accepts gratification other than legal remuneration .--**(1) Where, in any trial of an offence punishable under section 7 or section 11 or clause (a) or clause (b) of sub-section (1) of section 13 it is proved that an accused person has accepted or obtained or has agreed to accept or attempted to obtain for himself, or for any other person, any gratification (other than legal remuneration) or any valuable thing from any person, it shall be presumed, unless the contrary is proved, that he accepted or obtained or agreed to accept or attempted to obtain that gratification or that valuable thing, as the case may be, as a motive or reward such as is mentioned in section 7 or, as the case may be, without consideration or for a consideration which he knows to be inadequate."

A reading of the above section would clearly indicate that unless the contrary is proved, it has to be presumed that the public servant accepted bribe. In the above circumstances, this Court is of the view that the finding of the trial court that the prosecution succeeded in proving that the appellant had accepted Rs.500/- as bribe from PW.1 requires no interference. Hence, the finding of the trial court is confirmed.

8. The next question to be considered is regarding the sentence awarded by the trial court. Even though the prosecution succeeded in proving that the appellant committed offence punishable under Section 7 of the P.C. Act, the prosecution could not prove that the appellant was a

habitual offender. It is reported that the appellant is in jail from 28.3.2006. Considering the fact that the appellant is undergoing imprisonment for the last one year, this Court is inclined to reduce the substantive sentence of imprisonment to one year from two years. Accordingly, the substantive sentence of imprisonment awarded against the appellant is reduced to one year.

With the above modification, the Crl. Appeal is dismissed.

(K.THANKAPPAN, JUDGE)

sp/

K.THANKAPPAN, J.

CRL.A. NO.1376/2006

JUDGMENT

9TH APRIL, 2007.